



Changes in Licensing Rules

Last summer the Utah Appraiser Licensing and Certification Board ("The Board") held a public meeting to discuss issues of general concern about the state of the appraisal industry in Utah. Specifically, some had argued it is too difficult to become an appraiser in Utah. Trainee supervision and licensing was a major topic as well.

Practicing appraisers, appraiser trainees who were currently involved in the process of becoming licensed, and other interested parties presented specific comments. Many submitted suggestions for improving these processes.

Some of the recommendations and suggestions were then discussed and given lengthy further consideration and evaluation by the Board. This led to the Board enacting rules at the November 2003 Appraiser Licensing and Qualifications Board meeting that modified prior licensing requirements.

The resulting rules make significant changes:

Experience Rules Effective November 26, 2003:

*The minimum amount of experience required for a trainee has now been reduced from 24 months to 12 months to become a Licensed Appraiser. (Administrative Rule R162.104.1.1.1)

*Candidates for a Certified Residential appraiser's license must first become a Licensed Appraiser for a minimum of 12 months and earn an additional 100 points as a "LA." (Administrative Rules R162.104.5.2 and R162.104.1.1.1 and R162.104.1.1.2)

*A certified General Candidate must be an "LA" for an additional eighteen months and 200 points, or be a "CR" for an additional six months and earn 100 additional points before applying to become a "CG." (Administrative Rule R162.104.1.1.1 and R162.104.1.1.2)

*Individuals who were formerly Registered Appraisers must become Licensed Appraisers before becoming Certified (remember: qualified experience can be no older than five years from date of license application). (R162.104.5.2)

Trainee Rules Effective September 10, 2004:

The Board approved significant changes at their 7/28/04 meeting. These changes transform the training process of appraiser candidates, and become effective 9/10/04. The current system provides for "unclassified" and "trainee" appraisers. The category of "unclassified" will now be eliminated. The Division of Real Estate will begin the registration of trainees on 9/10/04. All current and future trainees will be required to register with the Division (see Trainee Registration Form, pages 15-16). Currently there is no cost for this registration.

The number of trainee experience points claimed for work already performed must be declared on the trainee registration form, and properly filed with the Division. Points may not be earned after 9/10/04 until a trainee files a registration form with the Division. The experience log chronicling this work will not be presented by the trainee at the time of registration with the Division, but will be required at the time the trainee appraiser applies to become a Licensed Appraiser.

continued on page 14

In This Issue

Appraiser Qualification Requirements	2
USPAP Q&A	3
Appraiser Disciplinary Sanctions	4
Real Estate Disciplinary Sanctions	7
Mortgage Disciplinary Sanctions	9
Division Receptionist Receives Award	12
CAUTION: Appraisal "Manipulation".	12
Important Changes to Appraiser Qualifications . . .	13
7 Hours or 15 Hours? That is the Question.	14
Trainee Registration Form	15-16
Advisory Opinion 27	17

This chart reflects important information about appraiser licensing regulations in Utah. It is not intended to supercede the Administrative Rules that elaborate on these details. This is merely to be used as a ready reference.

Appraiser Qualification Requirements

		Licensed Appraiser	Certified Residential	Certified General
A.	Federal Hour Requirement	2000	2500	3000
	State Point Requirement	400	500 ($\frac{3}{4}$ Res.)	600 ($\frac{1}{2}$ Com)
B.	Previous State Months Req.	24	30	36
	Current State Months Req.	12	24	30
C.	Existing State Min. Points Required as Licensed Before Certified		100	200
	Minimum	12 mo/ 100 pts	6 mo/100 pts	
D.	Maximum Points Earnable Per Year	400	400	400
E.	State Limit on Age of Experience	5 years	5 years	5 years
	Federal Limit on Age of Experience	none	none	none
F.	Education Hours Required	90	120	180
G.	Federal Transaction Limit			
	Licensed Appraisers:	Non-complex 1-4 residential unit less than \$1 million transaction value Complex 1-4 residential unit less than \$250,000 transaction value		
	Certified Residential:	1-4 residential unit without regard to transaction value or complexity No subdivisions requiring a development/analysis appraisal		
	Certified General:	All types of real estate and real property		

USPAP Q&A

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to inform appraisers, regulators, and users of appraisal services of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems.

Vol. 5, No. 5 – May 2003

Question #2:

In performing an appraisal to provide market value, must the appraiser analyze **past** listings and agreements of sale that existed for the subject property?

Response:

Standards Rule 1-5(a) states, in part;

In developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business: analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal. .

However, Standards Rule 1-1(b), a binding requirement, states;

. . .an appraiser must not commit a substantial error of omission of commission that significantly affects an appraisal;

The Comment goes on to state;

In performing appraisal services, an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent, given the scope of work as identified according to Standards Rule 1-20(f), to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are identified and, where necessary, analyzed. Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions.

Therefore, while SR 1-5 does not require that all prior listings of the subject property or agreements of sale be analyzed, appraisers should take sufficient care to ensure they are not omitting information that would significantly affect the appraisal.

Appraisers should also be aware that some entities have established Supplemental Standards requiring the analysis of prior listings in some appraisal assignments.

(Editor's note: See Utah Administrative Rule 162-106-7. Sales and Listing History: "In order to comply with Standard 1 of the Uniform Standards of Professional Appraisal Practice (USPAP), appraisers who are licensed or certified under this chapter shall analyze and report the listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), or the property owner.")

Vol. 5, No. 6 – June 2003

Question #3:

I am currently working in an appraisal firm as a trainee. As part of my training I contribute significant real property appraisal assistance in appraisal assignments performed by other appraiser in the firm but I do not sign the appraisal report or the certification. I understand that my name must be stated in the certification. Must the certification include a description of my assistance?

Response:

A description of your assistance or contribution to the assignment is not required in the certification. However, in accordance with Standards Rule 2-2(a), (b), and (c)(vii), the extent of the assistance must be described, summarized or stated (depending on the reporting option used) within the report. This required disclosure could be included within the certification, but it could also be included in some other section of the report.

Vol. 5, No. 7 – July 2003

Question #2:

Can an appraiser use "any" type of hypothetical condition in developing an appraisal?

Response:

No. The Comment to Standards Rule 1-2(h) states:

continued on page 9



Appraiser Disciplinary Sanctions

ADAMS, J. MICHAEL, State-Certified Residential Appraiser, Orem. Surrendered his appraiser certification effective September 24, 2003, with a State License to be issued in its place. Mr. Adams also agreed that for two years he will not supervise or sign for any other appraiser or for any person earning points for licensure or certification. In one case, Mr. Adams appraised a home constructed by Salisbury Development at \$132,000 and did not analyze the current \$110,200 contract of sale on the property. The comparables used were between 29 and 54 blocks away, although numerous comparables were available in the same subdivision. In another case, Mr. Adams appraised a Salisbury Development home at \$137,000 that buyers had contracted to purchase at \$108,200. The comparables used were between 26 and 33 blocks away although numerous comparables were available in the same subdivision, including a home that Mr. Adams had just himself purchased for \$108,000. In a third case, Mr. Adams indicated on an appraisal report done for a buyer's purchase money loan that it was for a refinance. AP98-06-07, AP99-06-18, AP20-03-01, AP01-05-14, AP01-08-07, AP01-08-08, AP01-08-54, AP01-08-55, AP01-10-23.

BODELL, J. MARTELL, SR., State-Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$2,500 fine, and that he will not supervise, train, or sign for any Licensed Appraiser, trainee, or unclassified person earning points for licensure for at least one year from June 25, 2003, but he will be permitted to supervise certified appraisers and to sign reports with other certified appraisers. Mr. Bodell admitted USPAP violations by generating only the second page of a URAR form and signing it in conjunction with a tax appeal on property in which he had a partial interest, and by failing to adequately supervise a junior appraiser who either did not show or did not analyze sales and listing history in his reports, and who did not properly treat seller concessions in his reports. AP01-12-01, AP02-04-15, AP02-15-16, AP02-07-12.

BOGGESS, LARS L., State-Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$1,500 fine for violating USPAP by making a series of errors that, although individually might not significantly affect the credibility of the results of an appraisal, in the aggregate affect the credibility of the results, and by failing to clearly and accurately set forth the appraisal in a manner that is not misleading. Mr. Boggess used one square footage figure in the cost section of his report and a larger square footage figure in the sales analysis section of the report, both of which square footage figures were larger than shown on County records. Mr. Boggess maintained that in mitigation his original calculation of square footage was done from plans and specifications, but admits that he did not revise the square footage figures in the second appraisal that he did for permanent financing once he had inspected the home to certify that it had been completed. AP02-11-01.

CAMPBELL, TROY A., State-Certified Residential Appraiser, Draper. Agreed to pay a \$500 fine and complete a USPAP course for violation of USPAP Standards Rule 2-5, which provided that an appraiser who signs a report prepared by another accepts full responsibility for the appraisal and the contents of the appraisal report. Although Mr. Campbell's office had Multiple Listing Service access to sales similar to the subject property, the sales comparables used by the registered appraiser who prepared the

report were outside of the neighborhood defined in the report. Mr. Campbell maintained that in mitigation, he released the registered appraiser from his employment because of issues related to the appraisal in this case. AP20-11-14.

CARLSEN, PAUL KENT, State-Certified Residential Appraiser, Logan. Agreed to pay a \$2,500 fine, complete remedial education, and have his certification placed on probation for two years from June 25, 2003 because of the following errors and USPAP violations in a number of different appraisal reports: erring in the determination of the highest and best use of property that would be landlocked by a proposed subdivision, failing to make it clear in an appraisal of a lot that the appraisal was subject to a home being moved to the lot, making inconsistent adjustments in an appraisal report or failing to make adjustments, failing to maintain documentation in the work file to support the cost approach in an appraisal report, and making numerous errors in a report that in the aggregate made it misleading. Mr. Carlsen also agreed that for two years from June 25, 2003, he will not supervise or sign for any other appraiser, appraiser trainee, or unclassified appraiser. AP20-09-09, AP20-03-18, AP01-02-10, AP95-11-04, AP96-03-01, AP98-06-25, AP01-03-29, AP98-09-05, AP02-01-09.

CARROLL, HOWARD R., State-Certified General Appraiser, Vernal. Agreed to surrender his State-Certified General Certificate effective June 28, 2003 and be issued a State -Certified Residential certificate in its place, that the State-Certified Residential certificate shall be on probation for two years, that he shall not supervise or sign for any other appraiser, trainee or unclassified person for two years, that he will pay a \$2,500 fine, and that he will complete a USPAP course. Mr. Carroll admitted that he violated USPAP in three appraisals by failing to employ recognized methods and techniques, but maintained that the violations were not intentional and were a result of not having adequate experience in appraising farm property. AP93-04-04, AP94-06-05, AP95-06-09.

CARTER, MIKE L., State-Certified Residential Appraiser, South Jordan. Because of USPAP violations in three appraisals, Mr. Carter agreed to pay fines totaling \$2,500 and to complete a USPAP course. In one appraisal, the Division alleged that Mr. Carter chose comparables in superior locations. Mr. Carter disputed that, but admitted violation of USPAP Standards Rule 1-1. In the second appraisal, Mr. Carter signed in a supervisory capacity on an appraisal that reported that the subject sold for more than it did. In the third appraisal, the Division alleged, among other things, that all of the comparables were from a superior area. Mr. Carter denied any intent to mislead but admitted that he violated USPAP in that appraisal report by failing to adequately supervise the registered appraiser who completed the report. AP99-05-09, AP01-12-31, AP02-05-15.

CHARLESWORTH, TYLER, State-Certified Residential Appraiser, Roy. Agreed to pay a \$1,500 fine and complete the 2004 USPAP Update Course for violating USPAP Standards Rule 1-1 by failing to employ recognized methods and techniques, USPAP Standards Rule 1-1(b) by commission of a series of errors that significantly affected the appraisal, and USPAP Standards Rule 1-5(b) by failing to analyze a prior sale of the property. The appraisal report in question did not disclose that the lot was a non-conforming lot, that there was no vehicular access over the property, or that only on-street parking was available for the property. The report did not show the correct owner of record at the time of the appraisal.

In addition, the report indicated that the condition of the property was average, but the selling agent reported that it was in sub-standard condition and needed substantial repair. AP02-05-08.

CHRISTENSEN, J. STEWART, State-Certified Residential Appraiser, Ogden. Application for renewal of certification surrendered effective June 25, 2003. Mr. Christensen agreed that for at least two years thereafter he will not own or manage a company that appraises in Utah, and that he will not work for a Utah appraiser as a trainee, as an unclassified individual earning points for licensure or certification, as clerical support staff, or in any other capacity. He also agreed that he will not apply for a new appraiser license for at least two years. AP75-02-09, AP99-08-01, AP01-04-20, AP01-008-41, AP01-11-10.

CLOWARD, JOSEPH D., State-Certified General Appraiser, Eagle Mountain. Agreed to pay a \$500 fine and take a USPAP course for signing a registered appraiser's report that violated USPAP and that had a final value that was not supported by the data in the workfile. Mr. Cloward admitted that during the three-month period during which he signed appraisals for the then-registered appraiser, he was at times rushed and did not always adequately supervise the registered appraiser. Mr. Cloward maintains that he terminated the association because he did not have adequate time to train or supervise the registered appraiser, and that he has not signed for any other appraiser either before or since that time. AP20-08-19.

DICKERSON, PATRICK K., State-Certified Residential Appraiser, Farmington. Agreed to pay a \$3,000 fine and complete a USPAP Update Course for violating USPAP by failing to adequately identify the appraisal problem, failing to correctly identify the intended use of the appraisal, and failing to analyze what he understood to be a prior purchase of the property. Mr. Dickerson understood that he was doing an appraisal for a refinance, but he had to contact a real estate agent to gain access to the vacant and keyboxed home. He found a listing on the property in the Multiple Listing Service at a sales price of \$750,000 but maintains that he did not know how to access the listing history on the property and therefore did not know that the property had been advertised for sale until one week before at a price of \$499,000, at which time the price had been increased to \$750,000. He thereafter revised his appraisal to reflect a value of \$750,000. AP-20-05-26

HAMPTON, JEFF A., State-Certified Residential Appraiser, Orem. Agreed to pay a \$500 fine and complete a USPAP course for USPAP violations in an appraisal in which he acted as the supervisory appraiser. The appraisal report contained a number of errors and used comparables that were farther away from the subject and in neighborhoods superior to the subject than more appropriate comparables that were available. AP20-20-03

HANSEN, PHILIP L., State-Certified Residential Appraiser, Las Vegas, Nevada. Surrendered his appraiser certification effective September 24, 2003, with a State License to be issued in its place. Mr. Hansen also agreed that for two years he will not supervise or sign for any other appraiser or for any person earning points for licensure or certification. In one case, Mr. Hansen's comparable #1 was identified as a split level home when, in fact, the property at that address was a 12-plex. There was no house but only a vacant lot at the address of Comparable #2. Mr. Hansen maintains that in mitigation the errors were typographical errors. The report

also did not disclose that the subject property was being used as a junk yard. In the second case, Mr. Hansen did a November 2002 "as is" appraisal of property identified as new construction when in fact there was no home on the lot and a 1993 manufactured home was to be moved to the site. AP98-01-23, AP03-02-06.

HARWARD, JUD, State Certified General Appraiser, Springville. Agreed to pay a \$1,500 fine in one case in which he admitted that his appraisal of the Lee Lemmon property in Huntington did not fully comply with USPAP and agreed to have a correction letter placed in his file in another case warning him that an appraiser must comply with USPAP regardless of any client instruction to the contrary. Mr. Harward maintained in the second case that he understood that he had been instructed by the court that he was not to comply with USPAP in a court-ordered appraisal. AP98-01-01, AP99-03-11, AP99-11-17

HOLDAWAY, ANITA LOUISE, State-Certified Residential Appraiser, Provo. Agreed to pay a \$500 fine, complete a 2003 USPAP course, and that she will not supervise or sign for any other appraisers, trainees or unclassified persons for two years because of a report she signed for a Registered Appraiser that violated USPAP Standards Rule 1-1(a) in that inappropriate methods were used. The complaint filed with the Division alleged that the value of the subject property was overstated and that there were a number of USPAP violations in the report. Ms. Holdaway maintains that in mitigation the report seemed reasonable based on information presented to her. AP99-10-13.

JORGENSEN, ROBERT C., State-Certified Residential Appraiser, West Jordan. Agreed to pay a \$1,500 fine for USPAP violations in: 1) a 1998 appraisal report that contained an unusually high site value, improperly performed cost analysis, and distant comparable sales although closer and more similar comparables were available; & 2) two 2000 appraisal reports for the same borrower on two different properties in which the complaining party alleged that he failed to consider the current listing price of the properties. Mr. Jorgensen maintains that in mitigation he did not recognize the difference between the subject and the comparable neighborhoods in the 1998 report because of inexperience and in the 2000 appraisals he was shown REPC's that supported a sales price in excess of the listing price in each instance. AP99-07-12, AP02-07-16.

LUTZ, DAVID M., State-Certified Residential Appraiser, South Jordan. Agreed to, among other things: surrender his appraiser certification effective March 24, 2004 and be issued a State License in its place; that he may not sit for the examination for a new appraiser certification for at least two years following the surrender of his certification; that he will not supervise or sign for any other person for two years; and that he will pay a \$4,500 fine. In a stipulation settling eleven complaints against Mr. Lutz, he admitted violating USPAP by committing substantial errors of omission or commission, failing to set forth appraisals in a manner that will not be misleading, failing to analyze all agreements of sale current as of the effective date of the appraisal, failing to analyze the listing history of the subject property, failing to maintain records to support his conclusions, failing to use such comparable cost data as are available to estimate the cost new of the improvement, and violating Utah Administrative Code Section R162-107.1.6, which prohibits splitting appraisal fees with a person who is not a licensed or certified appraiser in Utah. AP99-04-46, AP99-09-12,

AP20-05-10, AP20-08-18, AP01-10-27, AP02-04-05, AP02-05-11, AP02-11-12, AP02-12-09, AP03-04-04, AP03-08-18.

MILLER, CHARLES G., State-Certified Residential Appraiser, St. George. Agreed to surrender his State-Certified Residential status effective May 28, 2003 and be issued a State License in its place, that he would not apply for a new certification for at least two years, that he will pay a fine of \$3,500, that he will take a USPAP course and a course on appraising manufactured housing, and that he will not appraise manufactured homes until he has taken the manufactured housing course. Mr. Miller violated USPAP in four appraisals of property owned by the same owner by failing to collect his own data and using the data supplied by that owner instead. The data supplied by the owner resulted in appraisals that were above the sales prices of the properties appraised. In a fifth appraisal, Mr. Miller violated USPAP by failing to show sales history in the appraisal report, among other things. AP02-05-10, AP03-02-16, AP03-03-11, AP03-03-12, AP03-03-13.

MILLER, DOUGLAS G., State-Certified Residential Appraiser, North Ogden. Agreed to pay a \$1,500 fine in settlement of a case for violating USPAP by failing to report that the seller shown on the contract of sale upon which he relied was different than the property owner shown on his appraisal and by failing to correctly employ recognized methods and techniques. The complaint alleged that a \$705,000 appraisal done by Mr. Miller was inflated and was not based on proper methods. The borrowers on Mr. Miller's appraisal had contracted to purchase the property at \$700,000. The sellers on that contract had not yet closed on their purchase of the property. They had contracted to purchase the property at a price of \$525,000 from owners who had listed it for sale at a price of 547,800. Respondent maintains that in mitigation, he did analyze the listing price of the subject, but after viewing the area, quality of the construction, and size of the home, his experience led him to believe that the home was worth in the \$650,000 to \$750,000 range. AP02-08-12.

PREISLER, JARED L., State-Certified Residential Appraiser, Roy. Agreed to pay a \$3,000 fine and complete a USPAP course for failing to analyze the current listings of the subject properties and failing to correctly employ those recognized methods and techniques necessary to produce a credible appraisal in two appraisals involving the same real estate agent and the same mortgage company. Mr. Preisler maintained that he was intentionally misled by the sales agent and the mortgage company when they provided him with comparable sales data to use in his appraisal reports and with a contract of sale that, unknown to him at the time was inflated in order to facilitate a flipping scheme. AP02-08-11, AP02-10-02.

STAPLEY, MICHAEL D., State-Certified Residential Appraiser, West Jordan. Because of violation of USPAP Standards Rule 1-1 (a) and Standard 2, agreed to pay a \$1,000 fine and that he will not appraise any property that requires an income capitalization approach until after he has successfully completed a course in income capitalization. The Division received a complaint that Mr. Stapley had omitted reference to a single family home when he appraised a property that included a fourplex and a single family home in order to fit the requirements for a typical 2-4 unit residential loan. Mr. Stapley maintains that in mitigation the seller of the home stated that the home was not rented and was being used as a storage unit by the seller, and it therefore did not add value to the property. He also maintains that in mitigation he originally had

included the home in the appraisal report, but the lender instructed him to remove the fifth unit from the appraisal. AP02-08-06.

TIPPETTS, JAMES L., State-Certified Residential Appraiser, Brigham City. Effective November 26, 2003, certification surrendered for two years and a State License issued in its place. During the two-year period, he may not sign for, train, or supervise any other appraiser, appraiser trainee or unclassified person earnings points for licensure. He also agreed to pay \$4,000 fine and complete 15 hours of remedial education. Mr. Tippetts admitted violating USPAP Standards Rule 2-3, which requires an appraiser who signs a report to take full responsibility for it and Standards Rule 1-1 (a), which requires an appraiser to understand and correctly employ recognized methods and techniques, among other violations. Various allegations were made about a number of Mr. Tippetts' appraisals, including: that he failed to properly verify sales data; that in the appraisal of a former church building converted to a residence, he failed to take economic obsolescence into account and valued the property too high; that in another appraisal he failed to disclose that the subject property was a legal duplex with two separate structures on the same lot, failed to address the property as two units in his report, and used as comparables single family homes; and that he signed 122 appraisals done by a formerly registered appraiser and did not properly supervise those appraisals. AP02-12-20.

WARBURTON, BRUCE L., State-Certified Residential Appraiser, Layton. Surrendered his rights in connection with his pending application for renewal rather than continue to respond to the Division's investigation of complaints, resulting in his no longer being a State-Certified Appraiser as of March 26, 2003. AP20-01-06, AP20-01-20, AP20-02-28, AP20-04-06, AP20-08-07, AP01-08-52, AP01-10-02, AP01-11-23, AP02-11-24, AP01-12-25, AP02-03-05, AP02-04-18, AP02-05-09, AP02-08-09, AP02-11-06.

WARD, STEVE M., State-Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$1,500 fine and complete a USPAP course for violating USPAP by relying on an appraisal of the same property that had been done by another appraiser without verifying the information reported by the other appraiser, among other things. The complaint alleged that Mr. Ward went outside the neighborhood boundaries for comparables, although there were numerous comparables that were similar to the subject in style and age that had closed within the previous six months. A listing on the property had expired at sales price of \$359,900 two months before Mr. Ward's \$455,000 appraisal. Mr. Ward maintained that in mitigation, he did not know the listing history of the subject property at the time he did his appraisal. AP20-07-16.

WESTRA, KYLE S., State-Certified Residential Appraiser, South Jordan. Agreed to pay a \$500 fine and complete a USPAP class for violating Standards Rule 1-1(b) by relying on information about a home that came from a contractor without more thoroughly investigating the property. The complaint alleged that the comparables were far superior in design and construction than the subject property. Mr. Westra maintained that in mitigation the complainant did not inspect the interior of the home and therefore did not realize that the interior had been renovated to remove the functional obsolescence that is generally present in an older home, that he had no intent to push value, and that his appraisal in fact "killed the deal" when it did not come in high enough. AP99-03-15.



Real Estate Disciplinary Sanctions

ALEXANDER, CONNIE G., Inactive Sales Agent, Tooele. Agreed to complete remedial education before activating her license and that her license will be on probationary status for two years once it is activated, for violation of Administrative Rule R162-6.2.1.4 on Standard Supplementary Clauses. Acting as seller's agent, Ms. Alexander wrote a counter offer that included the language, "Seller requests 72 hour right of refusal" instead of using the Standard Supplementary Clause named "Option to Keep House on Market" approved by the Real Estate Commission. Ms. Alexander thought that by referring to a "72 hour right of refusal," it was a shorthand way to incorporate the language of the Standard Supplementary Clause into her contract. When a second buyer became interested in the property, and the first buyer refused to comply with the language of the Standard Supplementary Clause, Ms. Alexander advised the sellers they could cancel the contract with the first buyer and sell to the second buyer, which they did. Complicated and protracted litigation resulted. RE98-10-28.

BENJAMIN, STEVEN, Sales Agent, formerly with Great American Realty, P.C., Eden. Agreed to pay a \$500 fine and complete 6 hours education in real estate law, contract law, agency, and sub-agency for handling a transaction in an incompetent manner and for violating Rule R162-6.1.11 that requires an agent to have a written agency agreement with his principal. Mr. Benjamin signed an assignment of a real estate contract for a friend of his although he did not have a written power of attorney authorizing him to sign the document. He also received \$600 from a party to the contract that was not promptly deposited to escrow. RE02-12-19.

CHARLES Q. GREENWOOD and GREENWOOD PROPERTY MANAGEMENT, Unlicensed, Layton. Cease and Desist Order issued August 27, 2003 prohibiting acting as a property manager for compensation until such time as they become properly licensed with the Division. RE03-07-11.

CHRISTENSEN, JOSHUA aka JOSH, Inactive Sales Agent, North Salt Lake. License revoked by default on July 16, 2003 because of being unworthy or incompetent to act as a sales agent in such manner as to protect the public and because of conviction of a criminal offense involving moral turpitude. Mr. Christensen was convicted of Possession of Methylenedioxymethamphetamine ("Ecstasy") with Intent to Distribute and is currently serving a 64 month prison term. RE02-04-22.

EVES, JOYLENE K. and PAUL G. EVES, Orem, and WILLIAM D. TOOKE and HIDDEN VALE MANAGEMENT, INC., Provo. Cease and Desist Order issued August 13, 2003, prohibiting the Eves from: holding themselves out as engaged in real estate sales activity or property management activity that requires a license; from participating in property management that requires a license other than as "support services personnel"; accounting for and disbursing rents collected for others; authorizing expenditures for repairs to others' real estate; or owning or managing a property management company. The order prohibits Mr. Tooke and Hidden Vale Management, Inc. from allowing the Eves to manage Hidden Vale Management, Inc. or to act on behalf of Hidden Vale Management, Inc. in any capacity that requires a Utah real estate license. At the time of publication, Joy and Paul Eves had requested a

hearing on the Cease and Desist Order but no hearing had yet been held. RE03-07-23.

FLANNIGAN, NANCY V., Principal Broker, Metro Realty, Salt Lake City. Agreed to pay a \$500 fine and complete the Division Trust Account Seminar because of violation of Rule 162-4.2.7, which requires a written release to disburse funds if there is no contract language authorizing disbursement. Ms. Flannigan wrote up a new offer for her buyers that carried forward the seller disclosure deadline and the evaluations and inspections deadline from a previous offer. Realizing that those dates were no longer practical, Ms. Flannigan intended to extend them by adding, "Seller will work with buyer on home inspection scheduling and report to buyer with three days review time." After the transaction failed, the buyers claimed that they could cancel the contract based on that language, and the sellers claimed that the buyers had defaulted by not doing their inspection by the deadline. Ms. Flannigan, acting in the belief that the buyers had legally cancelled the contract, transferred their earnest money deposit to a new offer with a different seller. RE20-07-12.

GALE, MARTIN J., Associate Broker, formerly with Century 21 Preferred Realty in Salt Lake City. Agreed to pay a \$1,000 fine and complete the Division of Real Estate Trust Account Seminar and a course in real estate broker and agent ethics for violating U.C.A. §61-2-10(1). The Division alleged, but Mr. Gale did not necessarily agree, that after Mr. Gale and his former business associate and principal broker decided to part company, the principal broker removed Mr. Gale as a signatory on the brokerage trust account, but not on the operating account, and Mr. Gale caused funds to be transferred from the trust account to the operating account and withdrew them. Mr. Gale maintains, but the Division does not necessarily agree, that he was owed the funds as commissions and that his former principal broker was unreasonably withholding the funds from him. RE97-04-10.

GOON, MICHELLE R., Sales Agent, formerly with Wardley GMAC Real Estate, Layton. Agreed to pay a \$400 fine because of breaching a fiduciary duty owed by a licensee to a principal in a real estate transaction. Ms. Goon represented both buyers and sellers in a transaction and did not disclose to the sellers that the buyers' earnest money check had bounced although she was diligent in obtaining a replacement check. When the settlement deadline passed, the parties were agreeable to an extension until April 15, 2000, but no extension was filled out. When April 15, 2000 had passed, the sellers declared the buyers in default. The buyers complained to the Division, alleging that they thought they were still within the time they had to obtain financing when the sellers terminated the transaction. RE20-05-28.

GUNNELL, BRANDON, Sales Agent, Ulrich Realtors, Salt Lake City. Agreed to pay a \$500 fine and complete an ethics course for violation of U.C.A. §61-2-11(8). At the time that Mr. Gunnell purchased the property involved in the complaint, there had been a question about access to the property. He later learned that there was a recorded right of way for access to the parcel. Two years later, he sold the property. A neighboring property owner thereafter blocked the access of Mr. Gunnell's buyers to their property by piling a hill of dirt on the right of way. Mr. Gunnell's buyers subsequently discovered that he had not disclosed to them everything that the parties from whom he purchased had disclosed to him. Mr. Gunnell maintained that in mitigation, the adjacent

property owner never took steps to block his access and he did not think there would be any problems with his buyers obtaining access to the property. RE02-12-22.

HAWKES, SHERMAN B., Principal Broker, Hawkes and Company, Bountiful. Effective November 19, 2003, Mr. Hawkes was fined \$1,000 and had his license placed on probation for two years, during which time he may not provide property management services for any real property that is owned by anyone other than himself, his immediate family, or a family trust owned by his immediate family of which he is the trustee. During that same period, he may not have any sales agents or associate brokers licensed with him engage in property management for others. Mr. Hawkes failed to exercise reasonable supervision over former real estate sales agent Douglas Reynolds when Mr. Hawkes agreed to act as the principal broker for Harbor Place Management Realty, Inc. Mr. Hawkes had declared in writing to the Division that he was aware of restrictions that had been placed on Mr. Reynolds' probationary license and that he would agree to comply with those requirements, including a requirement that Mr. Reynolds could only sign on a trust account if two signatories were required. In some instance, Mr. Hawkes signed as the second signatory on trust account checks after they had been issued by Reynolds and had already cleared the bank. RE20-03-17

LARSEN, ALTON R., JR., Principal Broker, formerly principal broker of Homefinders Realtors, Salt Lake City. For violation of Utah Code 61-2-11(8) by failing to maintain his trust account and accounting records, Mr. Larsen agreed: 1) to surrender his broker license effective August 20, 2003 and be issued a sales license in its place; 2) that he will not apply for a new broker license for at least three years; 3) that he will not own or operate an active Utah real estate brokerage for at least three years; and 4) that for at least three years he will not use the sales agent license issued to him to work for a licensed principal broker in any capacity that would require him to be responsible for, or assist in, maintaining brokerage accounting records or the brokerage real estate trust account. A June 2000 Division audit of Mr. Larsen's brokerage determined that, although Mr. Larsen's trust liability was at least \$25,000.00 in August, 1997, the amount on deposit in his trust account at that time was \$22,243.33, and that the balance in the trust account was not brought back up above \$25,000.00 until August, 1998. Among other things, the audit also determined that \$656.38 of the funds that were diverted between August, 1997 and August 1998 involved nine checks written by Mr. Larsen's wife for personal expenses. In October, 2000, the bank at which the account was maintained took responsibility for the checks written by Mr. Larsen's wife since she was not authorized to sign on the account and reimbursed \$656.38 to the brokerage. RE01-06-11, RE35-00-09.

LLOYD, JOAN N., Sales Agent, formerly with Coldwell Banker Residential Brokerage, Main Office, Midvale. Agreed to pay a \$500 fine and complete an ethics course. Ms. Lloyd sold a home that she owned and in which she lived, and did not take reasonable efforts to verify the accuracy and content of the listing. RE03-06-11

LYONS, BONNIE, Sales Agent, formerly with Wardley GMAC, Layton office. Agreed to pay a \$500 fine and complete an ethics class for breaching a fiduciary duty to a principal in violation of U.C.A. §61-2-11(16). Ms. Lyons agreed to contribute a portion of her commission to a transaction to make the transaction work, but then did not make the contribution. Ms. Lyons maintained that in mitigation, she was unable to pay because her assistant took the

funds and left the state of Utah and because she herself was involved in a serious traffic accident. RE03-01-04.

MCENTIRE, DONALD R., Principal Broker, McEntire Real Estate, formerly of Utah, now located in Kihei, Hawaii. Agreed to pay a \$500 fine and complete the Division of Real Estate Trust Account Seminar for violating the rule that requires earnest money to be deposited upon acceptance of offer and the rule that requires all transactions to be assigned a separate transaction number. Three days after acceptance of an offer, the buyers attempted to cancel the contract. Mr. McEntire held the earnest money check undeposited. Two weeks later, the buyers authorized him to release the earnest money to the sellers. He endorsed the earnest money check over to the sellers, but when the sellers tried to negotiate the check, payment was refused due to insufficient funds. RE20-06-09.

NAGLE, SCOTT G., Sales Agent, American General Real Estate, Salt Lake City. Agreed to pay a \$200 fine for violation of Rule R162-6.1.5.8 by advertising a property without the written consent of the owner or the listing broker. Mr. Nagle ran a newspaper ad for a home that was listed with another brokerage without stating the property address, but stating the neighborhood, size, square footage, and an asking price. The ad solicited buyers to contact "Buyer's Agent Scott" at American General Real Estate. The ad also characterized the property as a foreclosure when in fact the property was not a foreclosure. Neither the owner of the property nor the listing brokerage had given Mr. Nagle permission to advertise the home. RE03-07-17.

SCHAERRER, CADE, Sales Agent, Pleasant Grove. Application for sales agent license approved on April 16, 2003, but license suspended until such time as he was released from criminal probation in connection with a misdemeanor conviction. He was subsequently released from criminal probation and activated with Americraft Realty, Inc. in Orem on June 20, 2003.

TAYLOR, DAVID L., Associate Broker, ERA Realty Center, Inc., Cedar City. Agreed to pay a \$750 fine for violating administrative rules R162-4.2 and R162-6.1.11.5. Mr. Taylor agreed to help find tenants for the owners of a home when the owners had to move out of state. He admitted that in his eagerness to help the owners, he did not sign a property management agreement with them. He also erroneously used his own checking account for the rental activity instead of running the funds through the trust account of the brokerage with which he is licensed. Mr. Taylor maintained that in mitigation, he voluntarily took the Division of Real Estate Trust Account seminar after the time period involved in the complaint, once in February 2002 and again in the fall of 2002. RE20-05-24.

WILLIAMS, SCOTT L., Sales Agent, licensed with Wardley Better Homes and Gardens Midvale Branch at the time of the offense. Agreed to pay a \$1,500 fine and complete the Division of Real Estate Trust Account Seminar and a Division-approved course on agency for acting incompetently in a transaction. Williams purchased a condo from a couple who agreed to provide seller financing on the transaction. He made two payments on the condo, but then made no further payments, so the sellers commenced foreclosure. Meanwhile, Williams had quit-claimed his interest in the condo to another party who occupied it and refused to vacate. After the sellers evicted the occupant, they found that the refrigerator and stove were missing and that the property had been vandalized. RE20-11-19.



Mortgage Disciplinary Sanctions

FARNSWORTH, JESS, Owner of Mortgage Executives, Toquerville. Agreed to a 60 day suspension of his individual registration effective May 7, 2003 and that he will pay a \$1,500 fine because his unregistered assistant created a false verification of deposit and forged the name of the depository representative on it. Mr. Farnsworth maintains that in mitigation the loan is still performing and that he terminated his assistant when he found out what she had done. During the Division's investigation, Mr. Farnsworth identified the assistant as "Carrie Shaw." The Division learned that "Carrie Shaw" was really Mr. Farnsworth's daughter, Carrie Farnsworth Cook. MG03-02-04.

MAURER, BARON, Formerly the Control Person for The Lending Company, Salt Lake City. Agreed to pay a \$500 fine for violating the Utah Residential Mortgage Practices Act by failing to require the other six individuals who worked for The Lending Company to promptly register with the Division and by failing to notify the Division when he left The Lending Company and moved to Hawaii. Maurer maintained that in mitigation he was the Control Person in name only and that he was not allowed to have any actual control over the company or over the employees and their actions. MG01-11-22.

MOLINA, CARLOS M. "MICHAEL," formerly Control Person for Beacon Hill Mortgage, Murray. Agreed to pay a \$1,500 fine for: 1) Changing the name under which Utah residential mortgage business was conducted from Beacon Hill Mortgage to Pryme Investment & Mortgage Brokers without changing the name with the Division; 2) Failing to disclose to the Division that the Idaho Department of Finance revoked the registration of Pryme Investment & Mortgage Brokers dba Beacon Hill Mortgage; and 3) Beacon Hill/Pryme having participated in a transaction in 1999 involving misrepresentation on a loan application. Mr. Molina's individual registration was renewed as part of the foregoing settlement, the registration of Beacon Hill Mortgage has expired, and the application for registration of Pryme Investment & Mortgage Brokers has been withdrawn. MG02-05-34.

PEARCE, MARK formerly the Control Person for Platinum Mortgage LLC, Draper. Agreed that he would surrender his right to renew his license when it expired on February 29, 2004 and that he will not apply for a new license for a minimum of three years. Complaints were filed with the Division alleging that Mr. Pearce altered documents in loan files. Mr. Pearce neither admitted nor denied the allegations, but agreed to the above sanction in settlement of Case #MG17636.



USPAP Q&A

continued from page 3

A hypothetical condition may be used in an assignment only if:

- *use of the hypothetical condition is clearly required for legal purposes, for purposes of reasonable analysis, or for purposes of comparison;*
- *use of the hypothetical condition results in a credible analysis; and*
- *the appraiser complies with the disclosure requirements set forth in USPAP for hypothetical conditions.*

Standards Rules 7-2(h) and 9-2(g) contain similar Comments.

Question #3:

I delivered an appraisal report to my client. A week later, an entity other than one of the identified intended users contacted me and asked that I provide a "reliance letter," enabling them to rely on the appraisal report for their investment purposes. My client says they have no problem with my doing that. Can I provide this entity with such a letter, even though I had not originally identified them as an intended user?

Response:

No. You cannot add what is in effect a new "intended user" after the completion of an assignment, no matter what terminology you use.

USPAP defines Intended User as:

The client and any other party as identified, by name or type, as users of the appraisal, appraisal review, or appraisal consulting report by the appraiser on the basis of communication with the client at the time of the assignment.

The proper way to handle this is to initiate a new assignment with this entity as the client and provide them an appraisal, being careful to develop an appropriate scope of work consistent with their own intended use.

This new assignment could be based on virtually the same data and analysis, and the value conclusion might be the same. However, in the new assignment you must consider the assignment parameters most appropriate to the scope of work for that client and the assignment, which could well be different from those of your prior client.

Vol. 5, No. 8 – August 2003

Question #2:

May I label a real property appraisal report using a term other than, or in place of, Self-Contained, Summary, or Restricted Use Appraisal Report?

Response:

The Comment to Standards Rule 2-2 states, in part:

An appraiser may use any other label in addition to, but not in place of, the label set forth in this Standard for the type of report provided.

Vol. 5, No. 9 – September 2003**Question #2:**

Does USPAP require real property appraisers to reconcile the comparable sales used in the sales comparison approach to value?

Response:

Yes. Standards Rule 1-6 states:

In developing a real property appraisal, an appraiser must:

- (a) reconcile the quality and quantity of data available and analyzed **within the approaches used**; and*
- (b) reconcile the applicability or suitability of the approaches used to arrive at the value conclusion(s).*

Comment: See the Comments to Standards Rules 2-2(a)(ix), 2-2(b)(ix), and 2-2(c)(ix) for corresponding reporting requirements.

Vol. 5, No. 12 – December 2003**Question #1:**

Do Standards Rules 1-5 and 7-5 require an appraiser to analyze the sales history for comparable sales?

Response:

No, they do not. These Standards Rules address only the subject property, not the comparable sales. However, appraisers may be subject to Supplemental Standards in certain assignments that require the appraiser to provide a more detailed analysis than otherwise required by USPAP.

Question #2:

I know that Standards Rule 1-5(a) requires an appraiser to analyze any current listings of the subject property. Does it also require analysis of prior listings of the subject property?

Response:

Similar to sales history requirements for comparable sales, this Standards Rule does not require an appraiser to analyze a prior listing history for the subject property. However, an analysis of a prior listing

history may be required by applicable Supplemental Standards in some assignments.

Vol. 6, No. 1 – January 2004**Question #2:**

A new state law requires all real estate appraisers in my area to regularly submit a log to the state appraiser board reporting the address of properties appraised along with the value opinion. Does this violate the confidentiality requirements in USPAP?

Response:

No. This does not violate USPAP.

The Confidentiality section of the ETHICS RULE states, in part:

An appraiser must not disclose confidential information or assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client; state enforcement agencies and such third parties as may be authorized by due process of law.

Disclosure of assignment results to the state board, or to any other entity required by law, is specifically permitted.

Vol. 6, No. 4 – April 2004**Question #1**

My client has asked that I provide a draft of my appraisal report prior to issuing the report in final form. Is this permitted under USPAP?

Response:

USPAP does not explicitly define or address drafts of reports. When clients, other intended users, and appraisers use the term “draft,” they may mean many different things, from preliminary spreadsheets to a written document that contains all that will be in the “final” report except it is labeled as “draft” and does not contain signatures. Report drafts have traditionally been part of certain types of appraisal practice but have never been considered acceptable in other types of appraisal practice.

State-regulated appraisers should be aware of applicable state laws and regulations. Many laws define a “report” as “any communication, written or oral, of an appraisal.”

Whatever a “draft” may be in a particular context, it would always be part of “appraisal practice,” because it is a valuation service provided by an appraiser. When performing a service that is considered appraisal practice but for which there are no applicable Standards Rules, an appraiser must comply with the PREAMBLE and the Rules (ETHICS RULE, COMPETENCY RULE, JURISDICTIONAL EXCEPTION RULE AND SUPPLEMENTAL STANDARDS RULE).

The second sentence of the PREAMBLE states “*It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to intended users of their services in a manner that is meaningful and not misleading.*” Additionally the ETHICS RULE states that “*An appraiser must not communicate assignment results in a misleading or fraudulent manner.*” Therefore, if an appraiser communicates with intended users prior to completion of an assignment, the communication must not be misleading.

The purpose of issuing a “draft” cannot be to allow the client to improperly influence the appraiser.

(Editor’s note: See Utah Administrative Rule 162-106-8. Draft Reports: “For the purpose of this rule, a “draft report” is defined as an appraisal report that is a work in progress and that has not yet been finished by the Appraiser.

106.8.1. One to Four Unit Residential Real Property. An appraiser may not release a draft report to a client in the appraisal of one to four unit residential real property.

106.8.2 An appraiser may release a draft report to a client in the appraisal of other than one to four unit residential real property if: a) the first page of the report prominently identifies the report as a draft; b) the draft report has been signed by the appraiser; and c) the appraiser complies with USPAP in the preparation of the draft report.”)

Question #2:

I was asked to appraise a single family residence for refinancing. I am aware that the property had been previously listed but did not sell. During my data investigation and analysis, I noted that the owner’s “estimate of value” was \$375,000. When I looked up the listing history, I found it had been withdrawn from the market at the asking price of \$325,000. What are my obligations under USPAP regarding a withdrawn or expired listing of the subject property?

Response:

Standards Rule 1-5(a) states that in developing a real property appraisal, an appraiser must, if such information is available to the appraiser in the normal course of business:

*analyze all agreements of sale, options, or listings of the subject property **current** as of the effective date of the appraisal.*

Therefore, there is not a specific requirement in Standards Rule 1-5(a) to consider and analyze a withdrawn or expired listing of the subject property, prior to the date of the appraisal.

However, any prior listing of the subject property (as of the effective date of the appraisal) might be significant in that it indicates the property’s availability in the market and the market reaction to that availability. Likewise, agreements of sale and options are generally significant to the appraisal problem in that they involve a “meeting of the minds,” relating to the property’s value, of the potential buyer and seller.

In the development of an appraisal, an appraiser is required under Standards Rule 1-1(b), to *not commit a substantial error or omission that significantly affects an appraisal.* If information about a withdrawn or expired listing is known by the appraiser and that information is relevant to the appraisal problem, it must be considered.

(Bold added for emphasis)



Utah Real Estate Appraiser Review

Purpose: To provide licensees with the information and education they need to be successful in competently serving the public.

Division DirectorDexter L. Bell
Editor Mark Fagergren
Layout Jennifer Eatchel

Utah Real Estate Appraiser Licensing and Certification Board

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Div. of Real Estate home page address:

Division Receptionist Semi-Finalist for Outstanding State Employee



Lieutenant Governor Gayle McKeachnie and Division Receptionist Janet Collings

Those of you who know her are not surprised to learn that Janet Collings, the receptionist for the Utah Division of Real Estate, was selected as a semi-finalist for the Governor's 2004 Outstanding State Employee of the Year!

Janet has worked for the Division for 16 years. She was selected because her service goes well

beyond merely performing her job duties. She handles a large volume of phone calls, walk-in applications, and a variety of other duties in an extremely competent and friendly manner. Janet is always pleasant despite handling several functions at once. We applaud Janet's selection for this well-deserved award.

New License Numbers

In November 2003 the Utah Division of Real Estate changed licensing software systems. As of that time, all of our licensees were assigned new license numbers. Budgetary constraints prevented us from sending out new licenses to our 36,000+ licensees all at once, so they are being sent with each licensee's renewal.

Our new system can still identify a licensee by their old number, however, the new number should be used in all business practices. Please be assured that the change in license number had no effect on the license status. Our licensee database online currently provides information on an individual's old and new license numbers, as well as license status, issue date, and expiration date. See www.commerce.utah.gov/dre for further information.

CAUTION: Appraisal "Manipulation" by Clients Observed

Appraisers should be aware that the Division has received information from a number of sources that demonstrate that some reports have been "manipulated" by clients. Most often this has been observed from electronically submitted appraisals that have had significant portions of an original report altered in some manner so as to mislead the intended user. A recent letter from one appraiser to the Division indicated that:

"...My appraisals have been fraudulently modified to be used in securing mortgage loans."

As always, the Division recommends that an appraiser keep in his complete appraisal file a signed copy of the original report. The Division will take appropriate action in dealing with licensees and non-licensees who are involved in this practice.



THE APPRAISAL FOUNDATION
*Authorized by Congress as the Source of Appraisal
 Standards and Appraiser Qualifications*

IMPORTANT CHANGES TO APPRAISER QUALIFICATIONS!!!

On February 20, 2004, the Appraiser Qualifications Board of The Appraisal Foundation adopted changes to the *Real Property Appraiser Qualification Criteria* that will become effective on January 1, 2008. These changes represent the minimum national requirements that each state must implement for individuals applying for a real estate appraiser license or certification as of January 1, 2008. The changes include increased required education, which is summarized as follows:

Category	Current Requirements ¹	1/1/08 Requirements ^{1, 2}	1/1/08 College-Level Course Requirements ³
License	90 hours	120 hours	None
Certified Residential	120 hours	200 hours	Twenty-one (21) semester credit hours covering the following subject matter courses: English Composition; Principles of Economics (Micro or Macro); Finance; Algebra, Geometry or higher mathematics; Statistics; Introduction to Computers – Word Processing/Spreadsheets; and Business or Real Estate Law. In lieu of the required courses, an Associate degree will qualify.
Certified General	180 hours	300 hours	Thirty (30) semester credit hours covering the following subject matter courses: English Composition; Micro Economics; Macro Economics; Finance; Algebra, Geometry or higher mathematics; Statistics; Introduction to Computers – Word Processing/Spreadsheets; Business or Real Estate Law; and two (2) elective courses in accounting, geography; ag-economics; business management; or real estate. In lieu of the required courses, a Bachelors degree will qualify.

¹ Hours required include completion of the 15-hour National USPAP Course (or its equivalent).

² Hours required include specific coverage of multiple topics – please see the *Real Property Appraiser Qualification Criteria* for details.

³ College-level courses and degrees must be obtained from an accredited college or university.

Please note that individual states may adopt requirements more stringent than the national requirements, and may opt to impose those requirements prior to January 1, 2008. Therefore, applicants for a real estate appraisal license or certification should always check with their state for individual requirements.

The Appraiser Qualifications Board intends to issue additional guidance regarding implementation of the revised Criteria in the near future. Please be sure to check our website at www.appraisalfoundation.org for the latest information. Questions regarding the national requirements can be directed to John S. Brenan, Director of Research and Technical Issues at The Appraisal Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, DC, 20005, via e-mail to john@appraisalfoundation.org, or by phone at (202) 624-3044.

(Revised 7/1/04)

Changes in Rules

continued from front page

Those desiring to become Trainees will also have to complete 75 hours of approved pre-license education before they can register with the Division. If an individual has accumulated experience points before September 10, 2004, but has not completed their required education, they will have to wait to register with the Division until they have completed their education. After 9/10/04, those who have not registered (with their required education) will not be able to claim any points after 9/10/04 until they submit a completed registration form.

In order to complete the registration process, the application form must be completed and signed by both the trainee and their Licensed and/or Certified supervisor(s), and submitted to the Division. After September 10, 2004, new trainees that register with the Division will only begin accumulating experience points *after their date of registration with the Division.*

The Division currently has no record of individuals who are in the training process and accumulating points. Because of this, there is no way to contact them about rules changes that affect them, except through their supervising appraisers. For this reason it is essential that supervising appraisers make every effort possible to contact individuals that they have supervised in the past five years (that have not subsequently become licensed and/or certified).

These new changes should reduce the concerns that the licensing process for unclassified individuals and trainees is too confusing and complex. The Division and the Utah Appraiser Licensing and Certification Board believe that this new system of registration of trainees will be an improvement over the existing system.

Trainees: REGISTER NOW! You may copy the form on pages 15-16 of this newsletter and then mail or deliver to the Division.

Supervisors: IMMEDIATELY contact any unlicensed or certified individual(s) that you have supervised within the PAST FIVE YEARS!!! Inform them of the new registration requirement.



7 Hours or 15 Hours? That is the Question

We are still receiving a number of calls at the Division of Real Estate asking about USPAP requirements. There has been some confusion because previously a 15 hour USPAP class was required with every third renewal. THIS IS NO LONGER THE CASE.

Last year the Appraisal Foundation introduced the "National USPAP Update Course" which teaches changes in USPAP from year to year. This is a seven hour course and it is now required WITH EVERY RENEWAL.

Many education providers offer this course. For a list of providers, see our web page: www.commerce.utah.gov/dre. Select "Education" and then "Appraiser Prelicense Education Providers" (it's the second option in the pop-up box). Many of these providers also offer continuing education classes. Information on how to contact them is included there.

Even though this class is now required, the Appraisal Foundation has suggested, and the Utah Appraiser Licensing and Certification Board has agreed, that we should continue to accept either the 15 hour course or the seven hour course through the remainder of 2004. Beginning in January 2005 ALL renewals must have the Update Course as part of the 28 hours required continuing education. After December 2004, the 15 hour course may be counted towards the 28 required hours, but WILL NOT satisfy the USPAP requirement.

Splitting Fees

See the changes below to the Administrative rule regarding the splitting of fees. Changes to the rule become effective September 10, 2004. Fees can only be paid to licensed or certified appraisers or appraisal trainees.

Unprofessional conduct consists of:

R162-107.1.6 Splitting appraisal fees with any [unclassified] person who is not a State-Licensed Appraiser or a State-Certified Appraiser, except that an [unclassified person] appraisal trainee may be paid a reasonable salary or a reasonable hourly rate for lawful services actually performed in connection with appraisals.



State of Utah
Appraiser Trainee Registration Form
page 1 of 2

Division of Real Estate
PO Box 146711
Salt Lake City, UT
84114-6711
(801) 530-6747

(Please Print)

NAME _____ DATE _____

ADDRESS OF PUBLIC RECORD _____

PHONE _____

CITY _____ STATE _____ ZIP _____ FAX _____

HOME ADDRESS (if different from above) _____ PHONE _____

CITY _____ STATE _____ ZIP _____ DATE OF BIRTH _____

SOCIAL SECURITY NUMBER _____ - _____ - _____ E-MAIL _____

**SUMMARY OF APPRAISAL TRAINEE CRITERIA
SET FORTH IN ADMINISTRATIVE RULES 162-105**

Classroom Hour Requirement. In order to become a trainee, the applicant must complete 75 classroom hours of State-approved education in subjects related to real estate appraisal, including the Uniform Standards of Professional Appraisal Practice (USPAP), and must have passed the final examination in the USPAP course. Credit will only be granted for a course that has been successfully completed. Successful completion of a course means that the applicant has attended a minimum of 90 percent of the scheduled class hours, has completed all required exercises and assignments, and has achieved a passing score on the course final examination. Please submit certificates or other evidence of completion for each course and document the course names, course provider names, and course completion dates for the 75 hours of education on page 2 of this registration form.

Experience Requirement. Until 9/10/2009, points that were earned before 9/10/2004 may be claimed if appropriately documented. Applicants will have to specifically document experience points at the time an application is made for State-Licensed Appraiser. No points can be earned after 9/10/2004 until this trainee registration form is completed and submitted to the Division.

Supervising Appraiser(s). A trainee must be accompanied by a supervising State-Licensed Appraiser, State-Certified Residential Appraiser, or State-Certified General Appraiser on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and exterior of the properties are inspected. A trainee must be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed inspections of non-residential properties worth 20 points in which both the interior and exterior of the properties are inspected. A trainee may have more than one supervising appraiser. Additional space for supervising appraisers is on page 2 of this registration form.

Name _____ License number _____

Business Address _____ City, State, Zip _____

Supervisor Signature _____ Date _____

Supervised points earned before 9/10/2004 (if applicable) _____

Under penalty of perjury, I attest that the information submitted on this application is true. I understand the requirements and that willfully submitting false information can result in license revocation and/or criminal prosecution. I attest that I have obtained and read the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder, and I understand them and agree to abide by them.

State of Utah _____ § Signature _____

County of _____

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public: _____

My commission expires: _____ Residing at: _____



State of Utah
Appraiser Trainee Registration Form
page 2 of 2

Division of Real Estate
PO Box 146711
Salt Lake City, UT
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(801) 530-6747

EDUCATION DOCUMENTATION

Please submit the original course completion certificates (75 hours total) to verify the listed education courses.

Course Name	Course Provider	Course Completion Date

SUPERVISING APPRAISER(S)

Name _____ License number _____
Business Address _____ City, State, Zip _____
Supervisor Signature _____ Date _____
Supervised points earned before 9/10/2004 (if applicable) _____

Name _____ License number _____
Business Address _____ City, State, Zip _____
Supervisor Signature _____ Date _____
Supervised points earned before 9/10/2004 (if applicable) _____

Name _____ License number _____
Business Address _____ City, State, Zip _____
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Advisory Opinion 27 (AO-27)

This communication by the Appraisal Standards board (ASB) does not establish new standards or interpret existing standards. Advisory Opinions are issued to illustrate the applicability of appraisal standards in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems.

SUBJECT: Appraising the Same Property for a New Client

THE ISSUE:

Situations often arise in which appraisers who have previously appraised a property are asked by a different party to appraise the same property. In some instances this request arises very soon after the first appraisal; in others, it may be months or years later. Under what circumstances can an appraiser accept an assignment to appraise a property for a prospective client when that appraiser has previously completed an appraisal of the same property for another client?

ADVICE FROM THE ASB ON THE ISSUE:

Relevant USPAP & Advisory References

- Confidentiality section of the ETHICS RULE.
- Statement on Appraisal Standards No. 9 (SMT-9), which addresses intended use and intended users in an assignment.
- Advisory Opinion 25 (AO-25), which covers clarification of the client in a federally related transaction.
- Advisory Opinion 26 (AO-26), which addresses reappraising/transferring a report to another party.

Accepting the assignment from the second potential client is not prohibited by

USPAP, assuming any existing confidential information is handled properly.

Several parts of the Confidentiality section of the ETHICS RULE are pertinent to this matter.

An appraiser must not disclose...assignment results prepared for a client to anyone other than the client and persons specifically authorized by the client...

An appraiser cannot disclose the results of a particular assignment, performed for a particular client, to anyone other than those designated by that client. However, an understanding of the definitions of *assignment*, *assignment results*, and *client* are key to a complete understanding of this requirement.

Assignment - a valuation service provided as a consequence of an agreement between an appraiser and a client

Client - the party or parties who engage an appraiser (by employment contract) in a specific assignment

Assignment Results - an appraiser's opinion and conclusions developed specific to an assignment

As can be seen in the definitions, both the client and the assignment results are specific to an assignment. If there is a new potential client, valuation services performed for that new client would constitute a new assignment and the assignment results would be specific to that new assignment. Therefore, acceptance and performance of the new assignment to appraise the same property would not be considered revealing the first client's assignment results to the second client, even if the value conclusions were the same. It should be noted

that the value conclusion could easily be different if the effective date or the scope of work changed in any manner. It should also be noted that USPAP requires the appraiser to provide an unbiased opinion of value to each client.

Obtaining a Release:

As a matter of business practice, some appraisers request a release from a prior client before accepting an assignment to appraise the same property for a new client or to disclose the assignment for the second client to the first client. However, USPAP does not require this. Also, appraisers should be aware that in some cases, informing a client about the existence of another client and the fact that the property was appraised for that other client may not be compliant with the portion of the Confidentiality section of the ETHICS RULE, which states:

An appraiser must protect the confidential nature of the appraiser-client relationship.

Confidential Information:

In all assignments the appraiser must comply with the Confidentiality section of the ETHICS RULE with respect to the handling of confidential information. Confidential information is defined in USPAP as:

information that is either

- *identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or*
- *classified as confidential or private by applicable law or regulation*

The Confidentiality section of the ETHICS RULE states:

continued on page 18

Advisory Opinion 27 (AO-27)

continued from page 17

An appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment.

An appraiser must not disclose confidential information...to anyone other than the client and persons specifically authorized by the client...

If a prior assignment included any confidential information, its disclosure to a different client or intended user would violate the ETHICS RULE if the information were still classified as confidential information.

This includes the requirement to comply with all confidentiality and privacy laws and regulations.

Client Expectations:

At times, an appraiser's client may believe that his or her legitimate business intent could be harmed by that appraiser providing an appraisal of the subject property of that assignment to another client. In such cases, the client and the appraiser may stipulate in their service agreement the conditions under which the appraiser may or may not appraise the same subject property. A client involved in litigation may stipulate that the appraiser cannot appraise a subject property for the opposing party in that litigation. As another example, if an appraiser is providing the value of a property to a client who is planning to sell that property in an auction, the appraiser and client may agree that the appraiser will not appraise the same property for a party planning to participate in the bidding process.

Illustrations:

Example A - Litigation

An appraiser performs an appraisal for a client involved in litigation and then is requested to appraise the same property for the opposing party. Is accepting the assignment for the second client prohibited by USPAP?

No, assuming confidential information is handled correctly. However, there are common business practices in such circumstances. Often, the opposing parties each hire an appraiser to appraise the subject property. If the opposing parties do not plan to hire one appraiser jointly, each party

could make it a part of the agreement between the appraiser and the client (the engagement letter or contract) that the appraiser is not to appraise the property for anyone representing the opposing side of the legal action.

In the absence of such an agreement between the client and the appraiser, the appraiser should consider the presence of confidential information. The knowledge of confidential information may prevent the appraiser from accepting the second assignment. The appraiser must decline the second assignment if:

- 1) the appraiser used confidential information in performing the first assignment;
- 2) that information would not be available from any other source; and
- 3) credible results cannot be derived without the use of this confidential information.

However, the appraiser may accept the second assignment, making sure to not disclose any confidential information from the original assignment to the second client, if

- 1) the information is available from another source (meaning it is not confidential information, as defined); or
- 2) the confidential information is not material to deriving credible assignment results.

However, the appraiser must ensure that confidential information is not disclosed, even if it has no impact on the assignment results (such as the litigation strategy of attorneys representing the first client).

Example B - Competing Banks

If an appraiser has appraised a property for Bank A and then is approached by Bank B to appraise the same property, does USPAP prohibit acceptance of the second assignment?

No, assuming confidential information is handled correctly. This constitutes a second assignment, a new client and a new agreement between a client and an appraiser.

This Advisory Opinion is based on presumed conditions without investigation or verification of actual circumstances. There is no assurance that this Advisory Opinion represents the only possible solution to the problems discussed or that it applies equally to seemingly similar situations.

Approved June 27, 2003 Source: The Appraisal Foundation/2004 USPAP



State of Utah
APPRAISER CONTINUING
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Salt Lake City, UT
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Program Date(s)	Number of Hours
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Description of Activity and Content (you may attach a brochure)	

Signature of Instructor/Program Official

Continuing Education courses must be for a minimum of two hours in length. Each course must meet the subject matter requirement of the Appraiser Qualifications Board which is the following:

- | | |
|---|---|
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